

PART 85-CLEAN VESSEL ACT GRANT PROGRAM

SUMMARY: This rule provides the requirements for participation in the Clean Vessel Act Grant Program authorized by Section 5604 of the Clean Vessel Act of 1992. This rule provides for the uniform administration of this new grant program.

DATES: This rule becomes effective April 11, 1994. Proposals will be accepted for FY 1995 funds (\$7.05 million) between the effective date and April 29, 1994. For FY 1996 and FY 1997, proposals will be due by May 1 of the year preceding that fiscal year (e.g., May 1, 1995 for FY 1996).

ADDRESSES: Copies may be obtained by mailing a request to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW, MS 140 ARLSQ, Washington, DC 20240, or obtained from the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, room 140, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: *Bob Lang, Chief, Division of Federal Aid, (703) 358-2156.*

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Subpart A-General

85.10 Purpose and scope.

The purpose of this Part is to establish requirements for state participation in the Clean Vessel Act Grant Program authorized by Section 5604 of the Clean Vessel Act (Public Law 102-587, Subtitle F).

85.11 Definitions.

Terms used in this Part shall have the following meaning:

- (a) *Clean Vessel Act or Act.* The Clean Vessel Act (Pub. L. 102-587, subtitle F).
- (b) *Coastal State.* A State of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. The term also includes Puerto Rico, the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands. The term excludes Alaska and American Samoa because these States have a ratio of the number of recreational vessels in the State numbered under chapter 123 of title 46, United States Code, to number of miles of shoreline (as that term is defined in 926.2(d) of title 15, Code of Federal Regulations, as in effect on January 1, 1991), of less than one.
- (c) *Costal waters.* In the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes. In other areas, those waters, adjacent to the shorelines, which contain a measurable percentage of sea water, including sounds, bays, lagoons, bayous, ponds, and estuaries.
- (d) *Coastal zone.* Coastal zone has the same meaning that the term has in section 304(1) of the Coastal Zone Management Act of 1992 (16 U.S.C. 1453(1)). The coastal zone consists of coastal waters (including the lands therein and thereunder) and the adjacent shorelands, including islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands and protect coastal waters.
- (e) *Construction.* Activities which produce new capital improvements and increase the value of usefulness of existing property. (f) *Dump station.* A facility specifically designed to receive sewage from portable toilets carried on vessels. Dump stations do not include lavatories or restrooms.
- (g) *Education/information.* The education/information program, as identified in the technical guidelines as published in the Federal Register, designed to make recreational boaters aware of the environmental pollution problem resulting from sewage discharges from vessels and inform them of the location of pumpout and dump stations.
- (h) *Eligible applicant.* An agency of a State designated by the Governor.
- (i) *Facility.* A pumpout station or dump station.
- (j) *Grant.* An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee.
- (k) *Inland State.* A State which is not a coastal State. The District of Columbia, American Samoa and Alaska are included as inland States (Rationale for Samoa and Alaska being inland States can be found in 85.11(b) above).
- (l) *Maintenance.* Those activities necessary for upkeep of a facility. These are activities that allow the facility to function and include routine recurring custodial maintenance such as housekeeping and minor repairs as well as the supplies, materials, and tools necessary to carry out the work. Also included is non-routine cyclical maintenance to keep facilities fully functional.
- (m) *Operation.* Those activities necessary for the functioning of a facility to produce desired

results. These are activities that make the facility work.

(n) *Plans*. Those plans identified in the technical guidelines as published in the **Federal Register**, for construction or renovation of pumpout and dump stations necessary to ensure that there are adequate and reasonably available stations to meet the needs of recreational vessels using the coastal waters of the State.

(o) *Pumpout station*. A facility that pumps or receives sewage from a type III marine sanitation device (holding tank) installed on board vessels.

(p) *Recreational vessel*. Watercraft manufactured for operation, or operated, primarily for pleasure. This term includes any watercraft leased, rented, or chartered to another for the latter's pleasure.

(q) *Renovation*. Major rehabilitation of a facility to restore it to its original intended purpose.

(r) *Surveys*. Those surveys identified in the technical guidelines as published in the **Federal Register**. Surveys are designed to determine the number and location of all operational pumpout and dump stations at public and private marinas, mooring areas, docks, and other boating access facilities within the coastal zone. Surveys also are designed to determine the number of recreational vessels in coastal waters with holding tanks or portable toilets, and the areas of coastal waters where those vessels congregate.

(s) *Type III marine sanitation device (holding tank)*. Any equipment for installation on board a vessel which is specifically designed to receive, retain, and discharge sewage.

85.12 Information collection, record keeping, and reporting requirements.

(a) The information collection requirements for this grant program, except for surveys, are those necessary to comply with 43 CFR 12 which include a narrative statement as identified in 85.22 Grant Proposals. The collection of survey information contained in this rule was approved by the Office of Management and Budget as required by 44 U.S.C. 3501 et seq., October 18, 1993, OMB No. 1018-0086, expiration date September 30, 1996.

(b) Record keeping requirements include the tracking of costs and accomplishments related to the grant as required by 43 CFR 12.60, monitoring and reporting program performance (43 CFR 12.80), and financial reporting (43 CFR 12.81).

(c) Reporting requirements include retention and access requirements as required by 43 CFR 12.82.

Subpart B-Application for Grants

85.20 Eligible activities.

(a) Eligible grant activities-coastal States:

(1) Eligible activities include identification in the coastal zone of all operational pumpout and dump stations, and surveys of recreational vessels in coastal waters with holding tanks or portable toilets, and the areas where those vessels congregate. Also eligible are costs of developing a list, including chart coordinates, of all operational pumpout and dump stations in the coastal zone of the State, for submission to the Fish and Wildlife Service.

(2) Plans for construction and renovation of pumpout and dump stations in the coastal zone of the State necessary to ensure that these stations are adequate and reasonably available to meet the needs of recreational vessels using the coastal waters of the State. Completed State-funded plans may be submitted after the technical guidelines appear in the Federal Register.

(b) Eligible grant activities-all States:

(1) Eligible grant activities include education/information program to educate/inform recreational boaters about the environmental pollution problems resulting from sewage discharges from vessels and to inform them of the location of pumpout and dump stations.

(2) Eligible grant activities include the construction, renovation, operation and maintenance of pumpout and dump stations, including floating restrooms in the water, not connected to land or structures connected to the land, used solely by boaters. Eligible grant activities also include any activity necessary to hold and transport sewage to sewage treatment plants, such as holding tanks, piping, haulage costs, and any activity necessary to get sewage treatment plants to accept sewage, such as installing bleed-in facilities.

(c) Ineligible activities:

(1) Activities that do not provide public benefits.

(2) Enforcement activities.

(3) Construction/renovation of upland restroom facilities.

(4) Construction, renovation, operation and maintenance of on-site sewage treatment plants, such as package treatment plants and septic systems, and of municipal sewage treatment plants for primary and secondary treatment.

85.21 Application procedures.

(a) Eligible applicants will submit their proposals to the appropriate Regional Office of the U.S. Fish and Wildlife Service.

Region 1 States Include-American Samoa, California, Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington

Division of Federal Aid, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Avenue, Portland, Oregon 97232- 4181, (503) 231-6128

Region 2 States Include-Arizona, New Mexico, Oklahoma, and Texas

Division of Federal Aid, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue SW., Albuquerque, New Mexico 87103, (505) 766-2095

Region 3 States Include-Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin

Division of Federal Aid, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building,
1 Federal Drive, Fort Snelling, Minnesota 55111-4056, (612) 725-3596

Region 4 States Include-Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands

Division of Federal Aid, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 324,
Atlanta, Georgia 30345, (404) 679-4159

Region 5 States Include-Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia

Division of Federal Aid, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley,
Massachusetts 01035-9589, (413) 253-8501

Region 6 States Include-Colorado, Kansas, Montana, North Dakota, Nebraska, South Dakota, Utah, and Wyoming

Division of Federal Aid, U.S. Fish and Wildlife Service, 134 Federal Building, P.O. Box 25486,
Denver, Colorado 80225 134 Union Boulevard, third floor, Lakewood, Colorado 80225, (303)
236-7392

Region 7 State Includes-Alaska

Division of Federal Aid, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage,
Alaska 99503, (907) 786-3435

(b) Proposals will be accepted for FY 1995 funds (\$7.05 million) between the effective date and April 29, 1994. For FY 1996 and FY 1997, proposals will be due by May 1 of the year preceding that fiscal year (e.g., May 1, 1995 for FY 1996).

85.22 Grant proposals.

Grant proposals will consist of a narrative which identifies and describes the following:

- (a) The need within the purposes of the Act (Coastal States with approved plans should indicate how the activities contained in the proposal implements the plan);
- (b) Discrete objective(s) to be accomplished during a specified time period that address the need(s);
- (c) Expected results or benefits from accomplishing the objectives, including the numbers of recreational vessels and people served;
- (d) The approach to be used in meeting the objectives, including specific procedures, schedules, key personnel, cooperators, grant location, innovative approaches, public/private partnerships, education, sensitive waters, public access, and estimated costs;
- (e) Amount and source of matching funds; and,
- (f) Fees for use of facility.

Subpart C-Grant Selection

85.30 Grant selection criteria.

The Director shall give priority consideration to grant proposals that meet the criteria listed in Subsections a-h and in the accompanying chart:

- (a) In coastal States that have no survey or plan, proposals to complete such survey and plan;
- (b) Proposals for constructing and renovating pumpout and dump stations without an approved plan;
- (c) In coastal States, proposals for constructing and renovating pumpout and dump stations in accordance with a coastal State's plan approved under section 5603(c) of the Clean Vessel Act, and for inland States, proposals for constructing and renovating pumpout and dump stations in accordance with an inland State's plan;
- (d) Proposals that provide for public/private partnership efforts to develop and operate pumpout and dump stations;
- (e) Proposals for innovative ways to increase the availability and use of pumpout and dump stations, e.g., where private parties put in more than the minimum amount;
- (f) Proposals that include an education/information component;
- (g) Proposals that benefit the waters most likely to be affected by the discharge of sewage from vessels, including the waters as defined in the technical guidelines as published in the **Federal Register**; and,
- (h) Proposals in areas with high vessel/pumpout or dump station ratios.

Criteria	Points	
	Coastal state	Inland state
a. Do a survey/plan	50	
b. Construct w/no plan	10	5
c. Construct with plan	20	10
d. Partnership	10	5
e. Innovative approach	5	2
f. Education	5	2
g. Sensitive area	5	2
h. Low pumpout ratio	5	2
Total		

85.31 Grant selection.

The Fish and Wildlife Service, Division of Federal Aid, will convene a ranking panel of Federal employees, to include representatives from the Service's Washington Office of the Division of Federal Aid, the National Oceanic and Atmospheric Administration, the Environmental Protection Agency, and the U.S. Coast Guard, to review, rank, and make funding recommendations to the Director of the Fish and Wildlife Service. The Director will make the selection of eligible grants by August 1, annually. Upon selection of a proposal the appropriate Regional Office will advise the successful applicant of additional documentation requirements.

Subpart D-Conditions on Use/Acceptance of Funds

85.40 Cost sharing.

- (a) The Federal share shall not exceed 75% of total costs approved in the grant agreement.
- (b) The provisions of 43 CFR 12.64 apply to cost sharing or matching requirements. Third party in-kind contributions must be necessary and reasonable to accomplish grant objectives and represent the current market value of noncash contributions furnished as part of the grant by another public agency, private organization, or individual.

85.41 Allowable costs.

- (a) Allowable grant costs are limited to those costs that are necessary and reasonable for accomplishment of approved grant objectives and meet the applicable Federal cost principles in 43 CFR 12.60(b). Purchase of informational signs, program signs, and symbols designating pumpout and dump stations, are allowable costs.
- (b) Grants or facilities designed to include purposes other than those eligible under the Act shall have the costs prorated equitably among the various purposes. Grant funds shall only be used for the part of the activity related to the Clean Vessel Act.
- (c) Costs incurred prior to the effective date of the grant agreement are not allowable with the exception that preliminary costs are allowed only with the approval of the appropriate Regional Director. Preliminary costs may include such items as feasibility surveys, engineering design, biological reconnaissance, appraisals, or preparation of grant documents such as environmental assessments for compliance with the National Environmental Policy Act.

85.42 Real and personal property.

- (a) Applicable regulations regarding acquisition, property records, maintenance, and disposal of real property and equipment are found in 43 CFR 12.71 and 12.72. If questions arise regarding applicability, the appropriate Regional Office should be contacted.
- (b) A State shall ensure that design and installation of the facilities are in accordance with the technical standards identified in the technical guidelines as published in the Federal Register.
- (c) The State must ensure that facilities are operated and maintained, and that structures or related assets are used for the stated grant purpose.

85.43 Signs and symbols.

A national symbol, to be developed, should be installed to be clearly visible to direct boaters entering the facility to pumpout and dump stations. Appropriate information signs should be installed at pumpout and dump stations. Such information could indicate fees, restrictions, hours of operation, operating instructions, and a contact name and telephone number if the facility is inoperable.

85.44 Fee charges for use of facilities.

A maximum of a \$5.00 fee may be charged, with no justification, for use of pumpout facilities constructed, operated or maintained with grant funds. If higher fees are charged, they must be justified before the proposal can be approved. Such proceeds shall be retained, accounted for, and used by the operator to defray operation and maintenance costs as long as the facility is needed and it serves its intended purpose. The maximum fee shall be evaluated for inflation, etc., each year.

85.45 Public access to facilities and maintenance.

All recreational vessels must have access to pumpout and dump stations funded under this grant program. Facilities shall be operated, maintained, and continue to be reasonably accessible to all recreational vessels for the full period of their useful life.

85.46 Survey and plan standards.

(a) Survey standards. (1) Surveys should be conducted according to the technical guidelines as published in the Federal Register. (2) Surveys may be conducted Statewide, if necessary, to obtain information on boats using the coastal zone.

(b) Plan standards. Plans should be developed according to the technical guidelines as published in the Federal Register.

85.47 Program crediting.

Signs should acknowledge that the facility was constructed or improved with funds from the Clean Vessel Act. Following is suggested language: ``This facility was built (or improved) using Federal Aid matching funds authorized by the Clean Vessel Act."

85.48 Compliance with federal laws, regulations, and policies.

(a) In accepting Federal funds, State representatives must agree to and certify compliance with all applicable Federal laws, regulations, and policies. This is done by submitting an assurances statement that describes the compliance requirements for Federal grants.

(b) Compliance with environmental and other laws, as defined in Service Manual 523 FW Chapter 1, may require additional documentation.

Consult with Regional Offices for specific applicability.

(c) For method of payment, refer to 43 CFR part 12, 31 CFR part 205, and any other regulations referenced in these parts.

Dated: February 11, 1994.